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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JONATHAN MICHAEL DOBRENOVIC,
Plaintiff,

Case No. 2:17-cv-02199-APG-PAL

ORDER REMANDING CASE

v.

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY; DOES 1 through
10; ROE ENTITIES 11 through 20, inclusive,
jointly and severally,

Defendants.

Defendant Allstate removed this case to federal court on August 16, 2017. Because Allstate did not properly support its invocation of this court's diversity jurisdiction, I ordered Allstate to show cause why this action should not be remanded to the state court. ECF No. 6. Allstate responded that the plaintiff demanded the \$15,000 policy limit plus consequential damages, emotional distress damages, punitive damages, and attorneys' fees. ECF No. 8 at 2. Allstate's counsel is "under the impression that Plaintiff's counsel's perception of the amount in controversy was well in excess of \$75,000." *Id.* But Allstate offers nothing else to support its contention that the jurisdictional minimum is satisfied.

Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). "A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stock West, Inc. v. Confederated Tribes of the Colville Res.*, 873 F.2d 1221, 1225 (9th Cir. 1989). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). Thus, courts "strictly construe the removal statute against removal jurisdiction." *Gaus*, 980 F.2d

1 at 566. “The ‘strong presumption’ against removal jurisdiction means that the defendant always
2 has the burden of establishing that removal is proper.” *Id.*

3 “[I]n cases where a plaintiff’s state court complaint does not specify a particular amount
4 of damages, the removing defendant bears the burden of establishing, by a preponderance of the
5 evidence, that the amount in controversy exceeds [\$75,000]. Under this burden, the defendant
6 must provide evidence establishing that it is ‘more likely than not’ that the amount in controversy
7 exceeds that amount.” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).
8 Broad allegations that the jurisdictional amount is met, “‘although attempting to recite some
9 ‘magical incantation,’ neither overcome[] the ‘strong presumption’ against removal jurisdiction,
10 nor satisf[y][the defendant]’s burden of setting forth, in the removal petition itself, the underlying
11 facts supporting its assertion that the amount in controversy exceeds” \$75,000. *Abrego v. The*
12 *Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir. 2006) (emphasis omitted) (quoting *Gaus*, 980 F.2d
13 at 567); *see also Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)
14 (“[R]emoval cannot be based simply upon conclusory allegations where the ad damnum is
15 silent.”) (internal quotations and citation omitted).

16 “Where a complaint is unclear as to the total amount of damages sought, but alleges only
17 upper or lower limits or types of damages, a district court is free in its preponderance-of-the-
18 evidence analysis to make estimations of the amount of damages that could be obtained consistent
19 with the vague wording of the complaint.” *Elliker v. Contractors Bonding & Ins. Co.*, 3:12-CV-
20 00438-RCJ-WGC, 2013 WL 757621 at *1 (D. Nev. Feb. 27, 2013) (*citing Guglielmino v. McKee*
21 *Foods Corp.*, 506 F.3d 696, 700-701 (9th Cir. 2007)). In making such analyses, district courts
22 can make “reasonable deductions, reasonable inferences, or other reasonable extrapolations from
23 the pleadings to determine whether it is facially apparent that a case is removable,” and “may use
24 their judicial experience and common sense in determining whether the case stated in a complaint
25 meets federal jurisdictional requirements.” *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-
26 1062 (11th Cir. 2010) (internal quotation marks omitted). *Cf. Ashcroft v. Iqbal*, 556 U.S. 662, 679
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1 (2009) (“Determining whether a complaint states a plausible claim for relief . . . requires the
2 reviewing court to draw on its judicial experience and common sense”).

3 Here, there is considerable doubt as to Allstate’s right to remove this case because it
4 appears highly unlikely that the amount in controversy exceeds this court’s jurisdictional
5 threshold. The plaintiff demands the \$15,000 policy limit. Even if that amount is trebled, the
6 damages remain well below the jurisdictional limit. Allstate offers no evidence about (or even an
7 estimate of) the consequential and emotional distress damages the plaintiff seeks. Based on my
8 judicial, legal, and practical experience and common sense, Allstate has not met its burden of
9 establishing by a preponderance of the evidence that the amount in controversy exceeds \$75,000.
10 *Roe*, 613 F.3d at 1061-1062; *Iqbal*, 556 U.S. at 679. Consequently, I must remand this case.

11 IT IS THEREFORE ORDERED the case is remanded to the state court from which it was
12 removed for all further proceedings. The Clerk of the Court is instructed to close this case.

13 Dated: September 7, 2017.

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16 ANDREW P. GORDON
17 UNITED STATES DISTRICT JUDGE
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